THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.6921 OF 2006

DATED:13.04.2006

Between:

Sk. Fathimunnisa Begum. and others ..Petitioners

And

The District Collector, Guntur District, Guntur and others

.. Respondents

THE HON'BLE SRI JUTICE V.V.S.RAO

WRIT PETITION No.6921 OF 2006

ORDER:

The petitioners, who are thirty in number, filed the instant Writ Petition seeking a writ of Mandamus declaring the action of respondents 1 to 3 in trying to evict them from their houses, as illegal and arbitrary. The petitioners are seeking a consequential direction to the respondents not to evict them from their respective houses.

The brief fact of the matter necessary for disposal of the Writ Petition, at the

admission stage, is as follows.

The petitioners are in possession of small extents of lands situated at Bhavajinagar of Sangadigunta Area in Guntur Town. They raised huts/small houses, obtained electrical connections and allegedly paying taxes to the Municipal Corporation. It appears, the father of the fourth respondent herein filed a petition, being L.G.O.P.No.66 of 1987, on the file of the Special Tribunal, constituted under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called, 'the Act'), Guntur, against ten persons for declaration and possession. The same was allowed on 17.04.1990 and the encroachers/land grabbers were directed to be evicted. The appeal filed against L.G.O.P.No.66 of 1987, being L.G.A.No.4 of 1990, was also dismissed by the Special Court constituted under the Act, on 08.11.1991. During the pendency of these proceedings, the father of the fourth respondent died and she came on record and filed E.P.No.6 of 2006 for recovery of possession. To cut the long story short, the Special Tribunal directed the Revenue Divisional Officer, Guntur, the second respondent herein, to execute the orders of the Tribunal, evict the occupants and put the fourth respondent in possession. The third respondent, who was directed by the second respondent to implement the orders, came to the area with subordinate staff and tried to evict the petitioners forcibly. Aggrieved by the same, the present Writ Petition is filed.

Among other, various grounds were urged. The learned counsel for the petitioners mainly emphasized that none of the thirty petitioners was given notice by respondents 1 to 3 and that they were not parties before the Special Tribunal or Special Court. A feeble attempt is made to assail the orders of the Special Tribunal, dated 17.04.1990, on the ground that the Special Tribunal is not competent to pass orders for eviction of those persons, who are not before it.

The learned Assistant Government Pleader for Revenue (General) for respondents 1 to 3 placed reliance on Rule 15 of the Andhra Pradesh Land Grabbing (Prohibition) Rules, 1988 ('the Rules', for short), and submits that whether or not a person is a respondent before the Special Tribunal or Special Court, if such person is in possession of the land grabbed, is liable to be evicted in accordance with Rule 15 of the Rules. He also placed reliance on a recent unreported judgment in **Smt.Sk.Mabunni v. The District Collector, Anantapur** (W.P.No.1742 of 2005, dated 17.03.2006) delivered by me, in support of his submission. He, however, does not dispute that when respondents 2 and 3 take necessary steps as directed by the Special Tribunal or Special Court for eviction of the occupants of the land from the land grabbed, necessarily notice has to be issued to the occupants.

In the decision referred to hereinabove, this Court made the following observations.

> There cannot be any dispute that under Rule 15 of the Rules, whenever a decision or decree is passed by the Special Tribunal or Special Court, it has to be communicated to the Revenue Divisional Officer and the same has to be implemented in accordance with sub-Rules (2) to (7) of Rule 15 of the Rules. However, the learned Counsel submits that as some of the third parties are in possession of the land, without notice there cannot be any execution of the order/decree passed by the Special Tribunal. Rule 15 of the Rules nowhere contemplates a notice to the person in possession or

occupation of the grabbed land. However, on reading sub-Rules (1) to (5) of Rule 15 together, it becomes clear that when the Revenue Divisional Officer issues a direction in Form V deputing any Officer not below the rank of Revenue Inspector, along with the authorization, the Officer, so deputed, shall have to serve the authorization on the person in possession of the land, asking to deliver the possession. Under Sub-Rule (4) of Rule 15 of the Rules, if a person in occupation or possession of the grabbed land delivers possession, pursuant to the service of authorization/order of the Revenue Divisional Officer, the deputed Officer shall record a certificate in Form VI and send the same to the Revenue Divisional Officer and to the Court/Tribunal. It is only when the person, on whom a copy of the authorization is served, fails to deliver possession of the land voluntarily, the Revenue Divisional Officer can take possession after removing any obstruction or unauthorized occupation by taking Police assistance. Therefore, it is reasonable to hold that even when a person, who is not a party to L.G.O.P. or L.G.C., is in occupation, he is entitled to a notice as contemplated under Rule 15(3) of the Rules. The notice need not be formal, but service of a copy of the authorization issued by the Revenue divisional Officer to the deputed Officer would be sufficient compliance with the rule of service notice. In this case, admittedly, no such notice was served on any of the 49 petitioners.

Following the above, this Writ Petition is also disposed of. There shall be *status quo* as on today. It shall, however, be open to respondents 2 and 3 or any of the subordinate officials to serve a copy of the authorization issued by the second respondent under Rule 15(2) of the Rules on each of the petitioners before taking further action for evicting them. No costs.

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(V.V.S.RAO, J)

13.04.2006

GJ